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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,558	07/25/2003	Ganesh Chandra Deka	18208	3392
23556	7590	07/28/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				SPERTY, ARDEN B
		ART UNIT		PAPER NUMBER
				1771

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/627,558	DEKA ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Arden B. Sperty	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 13 May 2005.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-37 is/are pending in the application.

4a) Of the above claim(s) 25-35 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-24, 36-37 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## FINAL OFFICE ACTION

1. Applicant's response, dated 5/13/05, has been entered and carefully considered.

The comments are not found persuasive, as explained below.

### ***Election/Restrictions***

2. Applicant's election of claims 1-24, 36, and 37 in the reply filed on 12/16/04 is confirmed by the response file 5/13/05. Because applicant has not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 25-35 are drawn to a nonelected invention. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1-24, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6169045 to Pike et al, as stated in the previous office action (repeated herein for convenience).

The Pike reference teaches a nonwoven web formed of drawn, crimped fibers. Materials for the web include a variety of thermoplastic polymers (col. 4, lines 48+), including those claimed. Conjugate fibers (col. 8, lines 8-12), including those comprising polypropylene and polyethylene, are taught (col. 7, lines 6-7). The product has the same density as the claimed invention (col. 2, lines 61-64). The reference further teaches a multilayer construction, formed of layers having different densities (col. 7, lines 50-61), meeting the limitations of claims 14-24. The drawn, crimped fibers are deposited onto a continuous forming surface, assisted by a vacuum device. The web is bonded in a through-air bonder. The process is described at column 6, lines 34+.

While the reference is silent with respect to the claimed surface roughness and "fuzz-on-edge" value, the properties are inherently present since the reference teaches the same materials, forming the web according to the same process, and having the same density. Discovering new properties in a known product does not constitute "novelty."

4. Claims 1-13 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as obvious over US 5605749 to Pike et al, as stated in the previous office action (restated herein for convenience).

The reference teaches a nonwoven pad produced from a nonwoven web containing crimped, spunbond conjugate fibers, the web having a density meeting the limitations of claims 7 and 11 (col. 3, lines 26-50). A web of continuous fibers is taught at column 4, lines 53-67). Thermoplastic materials for the conjugate fibers include polyolefins, polyamides, and others (col. 5, lines 49+). The abrasion resistance of the web is taught at column 5, lines 26-28. The low lint property (col. 5, lines 44-47) is seen to anticipate the claimed "fuzz-on-edge" property. The burden is upon Applicant to prove by declaration or otherwise that the web taught by the reference does not exhibit the same or equivalent "fuzz-on-edge" value as claimed by Applicant. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed "fuzz-on-edge" value would obviously have been provided by preparing the web in accordance with the specification and the web's intended use. See *In re Best*, 195 USPQ 433 as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1-13 and 36 are rejected as being anticipated by or obvious over the cited reference.

#### ***Response to Arguments***

5. Applicant's arguments filed 5/13/05 have been fully considered but they are not persuasive.
6. Regarding the 35 USC 102(b) rejection in view of US 6169045 to Pike, Applicant traverses the examiner's conclusion of inherency. Applicant asserts, on page 11 of the response, that the examiner must provide a basis in fact and/or technical reasoning to

support the determination of inherency. The Examiner remains of the position that “technical reasoning” was provided in the previous office action. Applicant’s opinion of the technical reasoning is a separate issue from whether or not the reasoning was provided. The examiner did provide technical reasoning, therefore Applicant’s argument is moot.

7. Applicant proceeds, on page 11, with an explanation of how the process taught by the Pike ‘045 reference differs from Applicant’s process. Applicant is of the position that the processes are not similar enough for an inherency conclusion to be made. Since the prior art does not measure the same properties claimed by Applicant, the conclusion regarding properties must be made according to the similarity of the prior art to the instant invention. The prior art teaches a process of forming a web by depositing fibers onto a forming surface assisted by a vacuum device placed underneath, bonded with a through-air bonder. The present application uses the same process. The materials used are also the same, and the products are of the same density. Therefore, the examiner concluded that the similarities are sufficient to deduce inherency of the unmeasured properties.

8. Regarding Applicant’s liner, to which attention is drawn at the top of page 12 of the response, Applicant’s “liner” is nothing more than a spunbond layer (Applicant’s Example 1) having no specific roughness, and therefore imparting no specific texture or roughness to subsequent layers. Applicant’s “liner” may even be considered analogous to the first layer of a multilayer product taught by the reference. A nonwoven will take on the contours or texture of whatever forming surface is used. Absent a showing of critical

roughness or texture of the “liner” layer, no appreciable difference is seen which would render a conclusion of inherency unfounded.

9. On page 13 Applicant argues against the 35 USC 102/103 rejection in view of US 5605749 to Pike. Applicant asserts that the teachings of the reference are not sufficient to anticipate the fuzz-on-edge property. While it is acknowledged that Applicant can be his own lexicographer, it is not conceded that other art must adopt the terminology created by Applicant. Applicant’s “fuzz-on-edge” property is an example of terminology and technique that is not prolific in the art. Therefore, reasonable comparisons must be made in view of what is prevalent and customary in the art. The fuzz-on-edge property is most closely related to the desired properties of low “pilling” or low “lint.” A low lint property is desired by the reference, therefore Applicant’s arguments are not persuasive. Applicant’s arguments based on self-concocted properties, without structure recited to provide those properties, are weak since a comparison of the prior art requires a comparison of structure. The only structure in claim 1 is a “nonwoven”. The rest of the limitations are properties which lack a specific structure to impart such properties, and arguments in support of implied structure can only be given minimal weight since the property in question is one which was created by and used almost exclusively by the present Assignee.

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### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*ABSperty*  
Arden B. Sperty  
Examiner  
Art Unit 1771

July 21, 2005

*CHERYLA JUSKA*  
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PRIMARY EXAMINER